

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 628 of 1997

in

SPECIAL CIVIL APPLICATION No 6005 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PARBHUBHAI DHANABHAI AHIR

Appearance:

GOVERNMENT PLEADER for Petitioners

MR MUKESH R SHAH for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 01/09/97

ORAL JUDGEMENT

Admitted. Mr.M.R.Shah, learned counsel for the respondent waives service of notice of admission. In the

facts and circumstances of the case, the matter is taken up to day for final hearing.

This appeal is filed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 6005 of 1996 on January 17, 1997.

The respondent is original petitioner. He filed the above petition. His case was that he filled in Form no.1 under Sec.6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act"). It was in connection with land bearing survey no.1. 2/1 and 2/2 situated at village Dhumbhal, Taluka Choryasi, District Surat. According to the petitioner, his was Hindu Undivided Family having eight coparceners and they were not having surplus land.

The Competent Authority, by an order dt. October 30, 1990, declared 3552.86 sq.meters of land as surplus by granting deduction of total land admeasuring 1218.50 sq.mts. against Kodharu, godown and land appurtenant thereto. The Government, however, took the said matter in revision under Sec.34 of the Act and issued a notice as to why the order passed by the Competent Authority should not be revised. Ultimately the Government by an order dt. June 4, 1992, declared 1149 sq.mts. of land as surplus land and refused to allow deduction in respect of the land admeasuring 1218.50 sq.mts. against the construction of Kodharu, Godown and land appurtenant thereto.

Being aggrieved by the order passed by the revisional authority, the petitioner approached this court.

The learned Single Judge after hearing the parties held that so far as the land of Kodharu was concerned, to the extent 215.25 sq.mts. it could not be said to be vacant land as the said land was required to be excluded from the provisions of the Act. Relying upon the definition of "Vacant land" under Sec.2(q) of the Act, in the light of proviso, the learned Single Judge was of the view that Kodharu land was covered under the proviso as such land is ordinarily for keeping cattle and hence Kodharu land could not be declared as vacant land so as to invoke the provisions of the Act. particularly proviso thereto, the learned Single Judge was of the view that Kodharu land was covered under the proviso and hence it could not be declared as vacant land or surplus land so as to invoke the provisions of the Act. Regarding godown, however, the learned Single Judge was of the

opinion that there was "some debate" regarding construction of godown. It was the case of the petitioner that the construction was there but according to the respondent authorities, the said construction was not legal and lawful in view of the fact that before making such construction permission of authority was not taken. In these circumstances, the learned Single Judge remanded the matter to the Competent Authority to decide as to whether the said construction could be said to be legal and the provisions of the Act could apply to the land covered by the godown.

We have heard Mr.Sompura, learned Assistant Government Pleader and Mr.M.R.Shah, learned counsel for the respondent.

So far as Kodharu land is concerned, in our opinion, no error of law has been committed by the learned Single Judge. We have been shown relevant record and revenue entries, and there was Kodharu. The said fact was mentioned in revenue record as early as in 1974. No doubt, Mr.Sompura contended that there was nothing to show that the Kodharu land was actually used for agriculture purpose. But when such entry was made in revenue record, as back as in 1974, and the learned Single Judge has held that it could not have been included in the holding of the petitioner, it cannot be said that the said view requires to be corrected by us. In these circumstances, we are of the view to that extent, the contention must be negatived.

So far as godown is concerned, even the learned Single Judge himself was of the opinion that there was "some dispute" and hence to that extent the point was not concluded by him. Instead, the learned Single Judge remanded the matter to the competent authority to decide the same in accordance with law. Mr.Sompura, however, submitted that the State Government in exercise of the revisional power under Sec.34 of the Act had passed the order and hence it is of no use to remand the matter to the Competent Authority as the Competent Authority had passed final order in favour of the petitioner which was interfered with by the State Government in exercise of revisional jurisdiction. He, therefore, submitted that an appropriate course would be to remand the matter to the State Government. To the said course being adopted, Mr.M.R.Shah has not objected.

In the facts and circumstances of the case, the appeal deserves to be partly allowed. So far as Kodharu land is concerned, the order passed by the learned Single

Judge that it is not covered by the provisions of the Act and could not be declared as vacant land is hereby confirmed. So far as the godown land is concerned, the direction of the learned Single Judge is hereby confirmed but instead of remanding the matter to the Competent Authority it is remanded to the State Government and the State Government will decide the same in accordance with law.

For the foregoing reasons, the appeal is partly allowed. In the facts and circumstances of the case, there shall be no order as to costs.

Dt. 1.9.1997. (C.K.THAKKER J.)

(S.D.PANDIT J.)